

The Republic of Uganda

In The High Court of Uganda Holden at Soroti

Miscellaneous Application No. 0069 of 2022

[Arising from Miscellaneous No. 04 of 2021]

Sheikh Abdul Swabur Gwaivu :::::::::::::::::::::::::::::::::: Applicant

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Versus

Sheikh Musa Hamede :::::::::::::::::::::::::::::::::: Respondent

Before: Hon. Justice Dr Henry Peter Adonyo

Ruling

This is an application by way of Notice of Motion brought under sections
15 83 and 98 of the Civil Procedure Act, Section 33 of the Judicature Act and
Order 52 rules 1 & 3 of the Civil Procedure Rules for orders that;

1. The ruling and orders in Miscellaneous Cause No. 004 of 2021 given
on the 11th day of November 2021 be revised and or set aside.
2. Costs of this application be provided for.

20 The grounds of the application as set out in the application and are
expounded in a supporting affidavit sworn by the applicant which briefly
are;

- That the learned trial Magistrate acted without jurisdiction when she
purported to appoint the respondent as the county sheikh of Kwarkwar
25 Muslim county in Kumi district, which county is non-existent under
the Uganda Muslim Supreme Council County Boundary demarcations.
- That the trial Magistrate acted illegally or with material irregularity
when she adjudicated and subsequently issued orders pertaining over
and in respect of a non-existent Muslim county.

- 30 - That the respondent was not duly and properly appointed in accordance with Article 21(5) of the Constitution of the Uganda Muslim Supreme Council.
- That on 21st day of November 2021 a report was issued to the chairperson, Kumi District Muslim Council notifying him of a meeting
35 of the Muslims within Kwarkwar Muslim County requesting for the approval of Kwarkwar Muslim County as a gazetted Muslim County.
- That on the 3rd day of December 2021 the secretary general of the Uganda Muslim Supreme Council issued a communique to the Chief Magistrates Court of Kumi regarding the status, legality and existence
40 of Kwarkwar Muslim County.

In response, the respondent denied the allegations by the applicant proceeding to state that the instant application was premature, frivolous and vexatious but also verbose and did not disclose any ground to warrant revision.

45 The respondent further averred that at the Magistrate clearly informed the applicant that matters of legality and formation of the said county was not within her court's jurisdiction and that the same question was not before her for determination and asked the applicant to seek redress for such a matter in High Court.

50 That the communiqué issued after court had determined the said application and under paragraph 2(a) thereof was declaratory after the Secretary General categorically stated that his appointment was legal.

That the applicant was misguided because the said report was not authored and was in regards to elective positons yet his position was by
55 appointment with the said report stating that Kwarkwar county was created on 22nd.10.2017 with its headquarters in Kabwalan.

That he was appointed by the District Kadhi and not court but court only interpreted UMSC documents and clarified to it the public because the applicant was also holding out as a county sheik for KwarKwar.

60 Submissions:

For the disposal of this application both parties were directed to file submissions but only the applicant responded with the respondent alluding to the fact of the applicant obtaining submission filing schedules in his absence but never serving him his submissions. That fact is pointed
65 out in a letter which is on record.

The applicant was represented by Nangulu & Mugoda Advocates and in their submissions they raised two issues.

1. Whether Kwarkwar Muslim county is a duly established county within Uganda Muslim Supreme Council County demarcations?
- 70 2. Whether the Respondent was duly appointed as the county sheikh of the said Kwarkwar Muslim County?

With regard to issue 1 counsel submitted that in Misc. Application No. 04 of 2021 the respondent misrepresented to court that Kwarkwar Muslim county had been duly created with the same being in existence and that he
75 had been duly appointed as the County Sheik and the trial Magistrate then proceeded upon the aforesaid misrepresentation to erroneously declare the respondent as the duly appointed county sheikh.

This action made the applicant's major point against decision of the trial magistrate to be the failure to determine the existence of the subject
80 Muslim county before presiding over the matter and thus ended up erring in law when she presided over a non-existent legal entity and even issued orders appointing office bearers into the said non-existent entity which facts are buttressed by Annexure "A" (A letter addressed to the Chief

Magistrates' Court of Kumi by the Honourable Secretary General Uganda
85 Muslim Supreme Council) and further confirmed by a report issued by the
chairperson Kumi Muslim Council requesting approval of Kwarkwar
Muslim county and a letter from the Chairperson UMSC notifying the
District Kadhi Kumi that elections should not be conducted Kwarkwar
Muslim County, among other counties, because they had not been legally
90 established.

With regard to the second issue, counsel for the applicant submitted that
without a duly established legal entity, the appointments of office bearers
ended up being illegal for **Article 21 (5) of the UMSC Constitution**
provides that a county sheik can only be appointed by the District Kadhi
95 on the advice of the District Council of Sheiks from the list of three names
proposed by the county committee and that by virtue of the above article,
before the appointment of any county sheikh; the following steps must be
observed;

- i. The county must be duly established and gazetted within the
100 Uganda Muslim Supreme Council county demarcations.
- ii. The county committee shall propose three names of potential
persons before appointment to the District Kadhi.
- iii. The District Kadhi shall consult and or obtain advise from the
District Council of Sheiks before appointment.
- 105 iv. Upon compliance with the above steps, the District Kadhi shall
then appoint a county sheik.

Counsel submitted that, unfortunately, in the instant circumstances none
of the aforesaid steps were undertaken resulting in an illegitimate
appointment of the respondent.

110 Given the above positions, counsel urged this honourable Court to allow
this application with the orders sought therein.

Courts decision:

Miscellaneous Cause No. 004 of 2021 was filed by the respondent for a declaration that he was the duly appointed sheik for Kwarkwar Muslim
115 county, a permanent injunction restraining the respondent (now applicant) from interfering with the applicant's administration of Muslim affairs in Kwarkwar Muslim County and costs.

The cause was premised on an appointment letter written by the Kumi Muslim District Council and various other documentary evidence that the
120 applicant was interfering with the respondent's appointment and work as the county sheikh for Kwarkwar Muslim County with the respondent in Miscellaneous Cause No. 004 of 2021 replying that after Kwarkwar was created from Kachumbala Muslim County he was appointed in an acting position as the county sheikh pending bye-elections and that he based this
125 on a report to His Eminence the Mufti of Uganda dated 18th June 2018 and various other reports that showed the non-existence of Kwarkwar Muslim county. He further contended that the appointment of the applicant contravened the constitution of the UMSC.

The trial Magistrate in her ruling considered the chronology of events
130 basing on the documents relied on by both parties and found that at the time Kwarkwar and Kachumbala counties were established about 2018, the respondent was not sheikh for Amus County.

She also found that it was unclear whether after his suspension and termination from Amus Muslim county the respondent, now applicant
135 was a sheikh in old Kachumbala or new Kachumbala Muslim county or even Kwarkwar.

This uncertainty, according to the trial magistrate made it doubtful whether the respondent, now applicant, became one of the leaders moved from new Kachumbala Muslim County to Kwarkwar Muslim County.

140 She then found that the applicant, now respondent, who had an appointment letter, for the position of Kwarikwari Muslim County Sheikh under Article 21 (5) of the UMSC Constitution was accordingly the county sheikh for Kwarkwar and proceeded to state that the respondent, now applicant, who protested his suspension and termination as Amus Muslim
145 County Sheikh for being procedurally wrong to seek the remedy of judicial review and that he could similarly challenge the appointment of the applicant, now respondent through the process of judicial review.

That decision resulted into this application for orders that;

- 150 a. The ruling and orders in Miscellaneous Cause No. 004 of 2021 given on the 11th day of November 2021 be revised and or set aside.
- b. Costs of this application be provided for.

This application was brought for Revision which is provided for under **section 83 of the Civil Procedure Act** which provides that;

155 **The High Court may call for the record of any case which has been determined under this Act by any magistrate's court, and if that court appears to have—**

- (a) exercised a jurisdiction not vested in it in law;**
- (b) failed to exercise a jurisdiction so vested; or**
- 160 **(c) acted in the exercise of its jurisdiction illegally or with material irregularity or injustice, the High Court may revise the case and may make such order in it as it thinks fit; but no such power of revision shall be exercised—**

(d) unless the parties shall first be given the opportunity of being heard; or

165 (e) where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any person.

The applicant in this instance claims the trial magistrate acted without jurisdiction when she appointed the respondent as County Sheikh for
170 Kwarkwar Muslim County.

This, claim, however, was rebutted by the respondent in his affidavit in reply as not being true, arguing that he was appointed by Kumi District Kadhi following a meeting with Kumi Muslim District Council Sheikhs and that the magistrate merely declared this fact after interpreting all
175 documents adduced in court.

The applicant further faulted the trial magistrate for presiding over a non-existent legal entity and issuing orders appointing office bearers to a non-existent entity.

My perusal of the record and documents filed in the lower court show that
180 **Annexure A** which the applicant is relying upon was as observed by the Respondent was issued after the trial magistrate had already delivered her ruling as it was issued on the 3rd of December 2021 yet the trial court's ruling was passed on 11th November 2021.

Also in **Annexure A** itself the Secretary General UMSC while
185 recognizing that under Article 2 (a) of the UMSC that Kwarkwar Muslim county had no legal basis because the due process of UMSC was never completed to establish it, the said Annexure continues to state that under **Article 21 (5) of the UMSC Constitution**, the District Kadhi had the mandate to appoint a care-taker county sheikh pending approval and due

190 process of establishing any new Muslim county and that it was in that context that the county sheikh was legally in office on a caretaker basis.

This same letter under paragraph 3 goes on to recognise that the applicant was suspended and relieved of his duties but that after an appeal the matter was amicably settled and he retained his office.

195 The other document relied upon is **Annexure B** which is a report to the Chairman Kumi Muslim District Council dated 21st November 2021 which indicates that the applicant, after the creation of Kwarkwar Muslim county and his being a resident of same area was transferred to it in his position as county sheikh.

200 From the above two documents, it would appear to me that that the trial magistrate was not without jurisdiction when she declared the respondent the duly appointed sheikh of Kwarkwar Muslim county because those evidentiary documents clearly enabled her to make that particular decision given the fact that the cause which was before the said court was
205 for the declaration that the respondent as the duly appointed County Sheikh and the restraining of the applicant from interfering with his duties.

From the look at what is raised in this application, I find it difficult to sort out what is exactly wanted from this Honourable Court for issues raised
210 by the applicant in this application and even those which were Miscellaneous Cause No. 004 of 2021 were issues relating to the administration in Kumi District Muslim Council and UMSC and these issues as was correctly advised to the parties by the trial Magistrate are issues which would best be resolved through internal mechanisms within
215 the UMSC structures as provided for in the UMSC Constitution and not through court process unless a firm decision had been made through such internal process with a dissatisfied party seeking for judicial review.

Given this fact, I would accordingly find that overall the lower court trial magistrate acted without jurisdiction in purporting to determine whether
220 Kwarkwar Muslim County was an existent body especially given the appointment letter that the respondent in Miscellaneous Cause No. 004 of 2021 had as both annexures relied on by the applicant herein indicate that Kwarkwar was recognised as a Muslim district pending the processes of its establishment and the position of county chief being legally
225 available.

Accordingly, the conflict raised by both annexures A and B as to who is the appointed county sheikh of Kwarikwari Muslim County would, in my considered view, first be best solved internally with equally including the applicant's contentions on the appointment of the respondent as the said
230 Muslim county sheik and then only referred to this Honourable Court for judicial review upon failure of the UMSC internal mechanisms in resolving the two issues of creation of the Muslim County as well as appointment of the leaders in that county, if outside of the UMSC Constitution.

235 Subsequent to the above findings and conclusions, I would state that this application partly succeeds as this Honourable Court finds that the dispute which was handled by the lower trial court was not entirely within its powers to do given that the issues of creation of Kwarkwar county and the appointment of its leadership were still not yet completed and thus
240 were premature before the courts of law.

Consequently, I am obliged to review and set aside the orders of the trial magistrate with advise parties to first utilise internal UMSC mechanisms provided for in UMSC Constitution and try to resolve the issues of the creation of Kwarkwar Muslim county as well as the appointment of the
245 leadership in that county and where any of them is dissatisfied with the

internal UMSC decisions then any of them would have the right to apply to this Honourable Court for judicial review.

This application thus partly succeeds with the following orders issued;

- The orders of the lower court are accordingly reviewed and set aside as
250 Miscellaneous Cause No. 004 of 2021 was prematurely brought into
the civil court system without the exhaustion of internal UMSC
processes.
- Accordingly, parties are advised to follow the correct procedures if
aggrieved with any status quo within Kwarkwar Muslim county to
255 utilise internal UMSC processes and if any of them is aggrieved with
such internal processes, then such an aggrieved person may then seek
judicial review.
- Each party herein is to bear own costs both in this court and in the
court below.

260 I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

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20th September, 2022